

AFFIDAVIT OF C. MICHAEL PFAU AND KATHERINE M. DAILEY

Immediately prior to my current assignment, I worked within the product management organization, focusing upon private line data services. I have a Bachelor of Science degree in Mechanical Engineering and a Masters Degree in Business Administration, both from Drexel University. In addition, I have a Professional Engineering License from the State of Pennsylvania.

B. Katherine M. Dailey

5. My name is Katherine M. Dailey. I am employed by AT&T Corp. as Staff Manager, Local Services Division Negotiations Support. My business address is 295 North Maple Avenue, Basking Ridge, New Jersey 07920.

6. I work with Mr. Pfau in developing and communicating AT&T's business requirements for local services to AT&T's regional personnel and in assessing business arrangements offered by the incumbent LECs. Among my responsibilities, I serve as AT&T's participating member on the LCUG Subcommittee on Performance Measurements, which developed the LCUG Service Quality Measurements that were initially submitted to the Commission by LCI International Telecom Corp. ("LCI") and the Competitive Telecommunications Association ("Comptel")¹ and are presently before the Commission in CC

¹ See *Public Notice Requesting Comments on Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems*, DA No. 97-1211 (released June 10, 1997).

FCC DOCKET CC NO. 98-121

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Docket No. 98-56.² I have also represented AT&T at a number of workshops relating to performance measurements, including workshops in Louisiana, California, Tennessee, and New York. I have submitted testimony regarding BellSouth's performance measurements before state commissions in Alabama, North Carolina, Georgia, Tennessee, Kentucky, and Mississippi.

7. I have held a variety of management positions at AT&T over the last seven years, including positions in center operations, network fraud management, and finance. I have a Bachelor of Arts Degree from the University of Notre Dame and a Master of Science Degree in Management from Stevens Institute of Technology.

II. SUMMARY OF AFFIDAVIT

8. This affidavit responds to BellSouth's claim that the performance data submitted by BellSouth through the Affidavit of Mr. William N. Stacy³ show that BellSouth is providing nondiscriminatory performance for CLECs. Since the Commission's denial of BellSouth's prior Section 271 applications for South Carolina and Louisiana on the ground,

² See Notice of Proposed Rulemaking, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 (released April 17, 1998) ("*Performance Measurements NPRM*"), ¶¶ 19-20.

³ Affidavit of William N. Stacy on Performance Measurements ("Stacy Performance Measurements Aff."). Mr. Stacy has also filed a separate affidavit on CLEC access to BellSouth's operations support systems ("Stacy OSS Aff.").

among others, that BellSouth had failed to submit the data required to establish that it was providing nondiscriminatory performance for CLECs, BellSouth has expanded the number of performance measurements it is now reporting and those it promises to report in the future. Nevertheless, BellSouth continues to fall far short of the Commission's evidentiary requirements for a showing of nondiscriminatory performance under Section 271. Indeed, BellSouth has failed to remedy most of the deficiencies that were previously identified by the Commission. BellSouth still provides no data on its timeliness in returning order completion notices to CLECs. BellSouth still provides no comparative data showing its performance for its own retail operations in providing notice of errors, order rejections, acceptance of orders, jeopardies, or order completions, or in provisioning network elements. BellSouth still provides no evidence demonstrating its ability to provide unbundled network elements for combination by CLECs. And the performance data which BellSouth does provide show that it is still taking, on average, more than a day to return order rejection notices and firm order confirmations to CLECs; that BellSouth's EDI flow-through rate is even lower than it was before; and that BellSouth is still discriminating against CLECs in its provisioning of orders.

9. In order to demonstrate compliance with the Act, BellSouth must have an appropriate performance monitoring system in place based on a set of properly defined and documented performance measurements. Such measurements are a necessary, but not a sufficient condition, however. BellSouth must also provide performance data for those

measurements for both CLECs and its own operations; such data must be reported in a sufficiently detailed and disaggregated manner so as to enable meaningful comparisons to be made; a sound, statistical methodology must be employed to compare BellSouth's performance for CLECs with its performance for its own retail operations; and an adequate auditing and enforcement mechanism should be in place to enable other parties to verify BellSouth's data and ensure ongoing compliance. Finally, putting all of this together, the data must show that BellSouth's performance for CLECs is in fact nondiscriminatory. BellSouth's current submission does not meet these requirements.

10. This affidavit first briefly addresses the requirements for performance measurements that BellSouth must meet in order to make a threshold showing of nondiscrimination under Section 271. It then examines the performance measurements and data that BellSouth has presented with its application. Based on our analysis, we conclude that neither the performance measurement plan nor the performance data provided by BellSouth are adequate to establish that BellSouth is providing CLECs with nondiscriminatory performance. In particular, we show, first, that BellSouth has failed to submit performance data, including a widespread failure to provide comparative results, for several measurements which the Commission has found necessary to any showing that parity of performance is being provided to CLECs. Second, we show that BellSouth has failed to provide either the methodology or the necessary statistical information that is needed to determine whether differences in

performance represent discrimination. Third, we show that, even without any statistical analysis, it is apparent that the performance data submitted by BellSouth with its application does not support its contention that nondiscriminatory performance is being provided to CLECs. Finally, we identify some additional problems with the way in which BellSouth has implemented or reported certain of its performance measurements, including improper definitions, ambiguous documentation, inappropriate exclusions, and inadequate disaggregation, which preclude them from providing meaningful results. These many deficiencies in BellSouth's submission preclude any finding that BellSouth is providing nondiscriminatory performance for CLECs.

III. APPROPRIATE PERFORMANCE DATA ARE REQUIRED TO ESTABLISH THAT BELL SOUTH IS PROVIDING NONDISCRIMINATORY PERFORMANCE FOR COMPETITORS.

11. As both the sole supplier of essential local facilities and services required by CLECs for entry into the local market and the CLECs' biggest competitor in the local market, the BOCs have no market incentive to provide quality wholesale services to CLECs.⁴ Recognizing this tension, Congress required the BOCs in Section 251 of the 1996 Act to provide services and facilities to CLECs in a just, reasonable, and nondiscriminatory manner,⁵

⁴ See *Performance Measurements NPRM*, ¶¶ 1-2, 8.

⁵ See 47 U.S.C. § 251(c)(2),(3) & (4).

and those requirements were made prerequisites to the provision of in-region, interLATA services by the BOCs by their incorporation in the competitive checklist in Section 271.⁶

12. BellSouth bears the burden of establishing that each and every requirement of Section 271, including the obligation to provide services and facilities to CLECs in a nondiscriminatory manner, has been satisfied.⁷ It is also clear that BellSouth cannot establish that CLEC access to its services, facilities and operations support systems ("OSS") is nondiscriminatory simply by asserting or promising that it will be so.⁸ Nor can BellSouth rely on the allegedly nondiscriminatory design of its systems and procedures to obviate the need for review of its actual performance, for as the Commission has recognized,

⁶ See 47 U.S.C. § 271(c)(2)(B)(i), (ii) & (xiv).

⁷ See, e.g., Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137 (released August 19, 1997) ("*Ameritech Michigan Order*"), ¶ 43 ("the ultimate burden of proof with respect to factual issues remains at all times with the BOC"), ¶ 158 (BOC "has the burden of demonstrating that it has met all of the requirements of section 271," including that "it provides nondiscriminatory access to all OSS functions"); *Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-121 (released December 24, 1997) ("*BellSouth South Carolina Order*"), ¶ 37 ("the BOC applicant retains at all times the ultimate burden of proof that its application is sufficient") (footnote omitted).

⁸ See, e.g., *Ameritech Michigan Order*, ¶ 55 ("we find that a BOC's promise of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271. Paper promises do not, and cannot, satisfy a BOC's burden of proof") (emphasis in original); *BellSouth South Carolina Order*, ¶ 38.

"the BOCs' use of nondiscriminatory, automated order processing systems . . . does not guarantee that requests placed via these systems are actually completed within [the same] period of time."⁹ In order to meet its burden on this issue, BellSouth must provide "the empirical evidence necessary to [enable the Commission] to make a reasoned and informed decision" that nondiscriminatory access is actually being delivered to CLECs,¹⁰ which in turn requires that BellSouth monitor the access it provides -- both to CLECs and to itself -- pursuant to an appropriate measurement plan and report the results to the Commission with its application. As the Commission stated in its *Ameritech Michigan Order*, "proper performance measures with which to compare BOC retail and wholesale performance, and to measure exclusively wholesale performance, are a necessary prerequisite to demonstrating compliance with the Commission's 'nondiscrimination' and 'meaningful opportunity to compete' standards."¹¹

⁹ First Report and Order, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act*, CC Docket No. 96-149 (released December 24, 1996), ¶ 243.

¹⁰ *Ameritech Michigan Order*, ¶ 212.

¹¹ *Ameritech Michigan Order*, ¶ 204 (quoting Department of Justice Evaluation, filed June 25, 1997, App. A, p. A-3). See also Affidavit of Michael J. Friduss on behalf of the Dept. of Justice, filed November 4, 1997, in *Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-231 ("Friduss S.C. Aff. (DOJ)"), ¶ 19 ("the ability to detect discrimination . . . is dependent on the establishment of performance measures that will allow competitors and regulators to measure BOC

(continued...)

13. In order to prove that nondiscriminatory access is actually being delivered to CLECs, BellSouth needs to demonstrate that the access being provided to CLECs is in fact at least "the same" as,¹² "equal,"¹³ or "equivalent to"¹⁴ the access that BellSouth provides to its own retail representatives in terms of its availability, timeliness, accuracy and completeness. This means that BellSouth must show not only that it has provided appropriate

¹¹ (...continued)

performance"); Consultation of the Michigan Public Service Comm'n, dated June 9, 1997, in *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137 ("*Michigan PSC Order*"), pp. 33-34 ("a method or system of gauging the performance," including "complete and appropriate performance standards," "must be in place before a positive determination can be made by the FCC regarding Ameritech's compliance with this checklist item"); Order Regarding Statement, *In re BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996*, Georgia Pub. Serv. Comm'n Docket No. 7253-U (March 20, 1997), pp. 29-30 ("comparative standards must be evaluated to ensure that the interfaces provide nondiscriminatory access").

¹² See, e.g., First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (released August 8, 1996) ("*Local Competition Order*"), ¶¶ 316, 518, 523; *Ameritech Michigan Order*, ¶ 135, 143; *BellSouth South Carolina Order*, ¶ 98; *Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231 (released February 4, 1998) ("*BellSouth Louisiana Order*"), ¶ 23.

¹³ See, e.g., *Local Competition Order*, ¶ 315; Second Order on Reconsideration, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (released December 13, 1996) ("*Second Order on Reconsideration*"), ¶ 9; *Ameritech Michigan Order*, ¶¶ 139, 166.

¹⁴ See, e.g., *Second Order on Reconsideration*, ¶ 9; *Ameritech Michigan Order*, ¶¶ 128, 130, 139, 140, 196; *BellSouth South Carolina Order*, ¶ 16; *BellSouth Louisiana Order*, ¶ 34.

electronic interfaces for use by CLECs, but that CLECs are able to use those interfaces to interact with its operations support systems and that BellSouth is in fact able to process requests from CLECs in an efficient and nondiscriminatory manner.¹⁵

14. To furnish additional guidance to the BOCs on how this showing of nondiscriminatory access should be made, the Commission has provided detailed information in its prior decisions under Section 271 regarding the evidence that the BOCs are expected to submit with their Section 271 applications.¹⁶ In addition, the Georgia Public Service Commission has ordered BellSouth to include data regarding its performance in accordance with certain prescribed measurements with any Section 271 application.¹⁷

15. These prior orders make clear that in order to show that it is providing nondiscriminatory access to CLECs, BellSouth must monitor and measure its performance for CLECs and submit that information to the Commission with its application together with "comparative performance information" regarding its performance of the same or analogous

¹⁵ See also *Ameritech Michigan Order*, ¶¶ 134-135 (specifically rejecting Ameritech's argument that the duty to provide nondiscriminatory access to OSS functions "extends only to the interface requirement").

¹⁶ See also Separate Statements of Chairman Hundt and Commissioners Quello, Ness and Chong to *Ameritech Michigan Order*.

¹⁷ See Order, *Performance Measurements for Telecommunications Interconnection, Unbundling and Resale*, Docket No. 7892-U (released May 6, 1998) ("*Georgia Performance Measurements Order*").

functions for its own retail operations.¹⁸ That performance data must show that parity of performance is being delivered for all OSS functions, including pre-ordering, ordering, provisioning, maintenance and repair, and billing.¹⁹ Further, the data must show that parity is being delivered for "each of the three modes of competitive entry strategies established by the Act: interconnection, unbundled network elements, and services offered for resale," and does "not favor one strategy over another."²⁰

16. Additionally, consistent with "the 1996 Act's goal of promoting local exchange competition," BellSouth must provide CLECs with access to OSS functions and associated services and facilities on terms and conditions that "provide an efficient competitor a meaningful opportunity to compete."²¹ This means that where BellSouth demonstrates

¹⁸ *Ameritech Michigan Order*, ¶ 212 (BOC must provide "comparative performance information" for unbundled network elements as well as resale services to permit meaningful comparisons between its performance for CLECs and its performance for its own retail operations); ¶¶ 139-141.

¹⁹ *See Ameritech Michigan Order*, ¶¶ 128, 130, 137, 158.

²⁰ *Ameritech Michigan Order*, ¶ 133. *See also id.*, ¶¶ 159-160 (specifically requiring proof of "nondiscriminatory access to OSS functions associated with unbundled network elements"); *Second Order on Reconsideration*, ¶ 9 ("to the extent that an incumbent LEC provides electronic pre-ordering, ordering, provisioning, maintenance and repair, or billing to itself, its customers, or other carriers, the incumbent LEC must provide at least equivalent electronic access to requesting carriers in the provision of unbundled network elements or services for resale").

²¹ *Local Competition Order*, ¶ 315.

(rather than merely asserts) that no analogous function or facility exists for itself, it must demonstrate that its support of the performance for CLECs is sufficient to enable the CLECs to compete fairly in the provision of local services.²²

17. The Commission's orders under Section 271 make clear that an appropriate performance measurement plan must include at least the following characteristics: (1) it must support statistically valid comparisons of the BOC's performance for CLECs with its performance for its own retail operations;²³ (2) it must be based on clear and precise definitions of the performance measurements to be used and the data to be collected and reported;²⁴ (3) it must monitor the BOC's performance for each of the principal pre-ordering, ordering and provisioning, maintenance and repair, billing, and other OSS functions;²⁵ (4) it must capture and retain sufficiently disaggregated information to account for performance differences that could distort conclusions regarding parity, such as variations due to differences in the underlying service or activity mix;²⁶ (5) it must be actually implemented and producing

²² See *Ameritech Michigan Order*, ¶ 141; *BellSouth South Carolina Order*, ¶ 98.

²³ See, e.g., *Ameritech Michigan Order*, ¶¶ 212, 139-141; *BellSouth South Carolina Order*, ¶¶ 118, 125-126.

²⁴ See, e.g., *Ameritech Michigan Order*, ¶¶ 209, 212.

²⁵ See, e.g., *id.*, ¶¶ 128, 130, 137, 158.

²⁶ See, e.g., *id.*, ¶¶ 206, 212.

stable results which demonstrate that nondiscriminatory access is in fact being provided to CLECs for interconnection, resale, and unbundled network elements;²⁷ and (6) it must be subject to appropriate audit procedures so that all parties can rely with confidence on the data reported by the BOC.²⁸ The Commission has also made clear that the mere fact that a BOC does not presently collect particular data in connection with its retail operations is not a valid basis for failing to provide performance data that is needed to determine whether nondiscriminatory performance is being provided to CLECs.²⁹

18. While the development of an appropriate performance measurement plan is an essential prerequisite for establishing that nondiscriminatory performance is being provided to CLECs, it is obviously not a sufficient condition. Once the necessary data is collected pursuant to an appropriate measurement plan, that data must be examined, pursuant to clear and theoretically sound analytical procedures, to determine whether the results show that CLECs are in fact receiving parity of performance for all OSS functions and for all three modes of competitive entry.

²⁷ See, e.g., *id.*, ¶¶ 133, 159-160; *BellSouth South Carolina Order*, ¶¶ 17, 141.

²⁸ See, e.g., Memorandum Opinion and Order, *Application of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp.*, File No. NSD-L-96-10 (released August 14, 1997) ("*Bell Atlantic/NYNEX Merger Order*"), App. C, p. 125 ("*Bell Atlantic/NYNEX shall provide access to the available data and information necessary for a carrier receiving Performance Monitoring Reports to verify the accuracy of such reports*").

²⁹ See *Ameritech Michigan Order*, ¶ 210.

IV. BELLSOUTH HAS FAILED TO PROVIDE THE PERFORMANCE DATA THAT ARE NEEDED TO DETERMINE WHETHER PARITY IS BEING PROVIDED TO CLECS.

19. As a threshold matter, there are several instances in which BellSouth has not provided the performance data that are essential to any determination as to whether BellSouth is providing nondiscriminatory performance for CLECs. Indeed, in several instances BellSouth has not provided performance data specifically found to be necessary in the Commission's *BellSouth South Carolina* and *BellSouth Louisiana* orders.

20. In order to establish that its performance for CLECs is nondiscriminatory, BellSouth must provide evidence that its performance for CLECs is equal or equivalent to its performance for its own retail operations. This showing necessarily requires not only data regarding BellSouth's performance for CLECs, but a *comparison* between BellSouth's performance for CLECs and its performance of the same or analogous functions for its own retail operations.³⁰ Moreover, the Commission has determined that the "equivalent access" required by the 1996 Act "must be construed broadly to include comparisons of analogous functions between competing carriers and the BOC, even if the actual mechanism used to perform the function is different for competing carriers than for the

³⁰ See, e.g., *Ameritech Michigan Order*, ¶ 212 (BOCs "should provide, as part of a subsequent section 271 application, . . . comparative performance data . . . [to] permit comparisons with [the BOC's] retail operations").

BOC's retail operations."³¹ This means that "[i]f a BOC performs an analogous activity for its retail operations, it needs to provide comparative information in its [Section 271] application to demonstrate its compliance with the nondiscriminatory standard in the Act."³²

21. In addition to the performance measurements for which data is omitted entirely from its application, BellSouth has failed to provide the necessary comparative information regarding its performance for its own retail operations for a number of critical performance measurements. Indeed, BellSouth continues to refuse to provide comparative data for several measurements for which the Commission has already put BellSouth on notice that comparative data must be provided. Among the measurements for which comparative data is lacking are the timeliness in returning order rejections, firm order confirmations, order completion notices, and jeopardies to CLECs, and its provision of unbundled network elements to CLECs.

A. Average Time To Return Completion Notices

22. Prompt notice to the CLEC that work on a service order has been completed is essential to parity of performance. Once an order has been completed by BellSouth, an electronic feed should return a service order completion notice to the CLEC within minutes. Any delay in the return of service order completion notices has serious

³¹ *Id.*, ¶ 139.

³² *BellSouth South Carolina Order*, ¶ 118; *BellSouth Louisiana Order*, ¶ 33 n.117.

consequences for the CLEC's ability to provide local service to its customers. Until the CLEC receives a service order completion notice, it does not know that the customer is in service, and it is unable to begin billing the customer for service or to address maintenance problems experienced by the customer. For these reasons, the Commission in its *BellSouth South Carolina Order* specifically instructed that "we expect BellSouth to provide information that shows it is providing competing carriers with timely receipt of order completion notices,"³³ and this same conclusion has repeatedly been stated by the Commission in other orders.³⁴

23. Notwithstanding the clear guidance provided by the Commission's prior orders, BellSouth has not included with its application any performance data showing its timeliness in providing notice of order completion to CLECs. Although BellSouth proposes to report such data at some future time, in this application it merely provides a blank chart and a unsupported claim that this measurement is "under development."³⁵ Such promises of future

³³ *BellSouth South Carolina Order*, ¶ 139. See also *id.*, ¶ 115 & n.347.

³⁴ See, e.g., *Bell Atlantic/NYNEX Merger Order*, App. D, Measure 6 (requiring Bell Atlantic and NYNEX to monitor and report on their "Timeliness of Completion Notification"); *Performance Measurements NPRM*, ¶ 64 (tentatively concluding that incumbent LECs must monitor and report their "Average Completion Notice Interval"); *BellSouth Louisiana Order*, ¶ 30 & n.104.

³⁵ See Stacy Performance Measurements Aff., Ex. WNS-3, Average Completion Interval Notice Report, note 1; Ex. WNS-1, p. 19.

compliance with the requirements of Section 271 are not sufficient to support BellSouth's present application.³⁶

24. Moreover, even the future performance promised by BellSouth is deficient. BellSouth apparently has no intention of providing comparative data regarding its performance of the analogous function for BellSouth's own retail operations, data that is required to establish parity of performance. Thus, BellSouth incorrectly asserts that data relating to its performance for itself is "not applicable."³⁷ Further, BellSouth proposes to report average completion notice interval data in the future only for CLEC resale orders and not for CLEC UNE orders.³⁸ Because of these omissions, BellSouth cannot establish parity of access for CLECs in this area even if, in the future, it provides the measurements that it is proposing to provide.

B. Average Time To Return Jeopardy Notices And Percentage Of Orders Given Jeopardy Notices

25. In both its *BellSouth South Carolina Order* and its *BellSouth Louisiana Order*, the Commission also stressed the "critical" importance of providing CLECs with timely

³⁶ See *BellSouth South Carolina Order*, ¶ 38 ("a BOC's promises of *future* performance . . . have no probative value in demonstrating its *present* compliance with the requirements of section 271"); *Ameritech Michigan Order*, ¶ 255 (same) (emphasis in original).

³⁷ See Stacy Performance Measurements Aff., Ex. WNS-1, p. 19.

³⁸ See *id.* It is also unclear whether BellSouth intends to report its performance on manually submitted CLEC orders.

notice of jeopardy situations: "it is critical that the BOC provide the competing carrier with timely notice if the BOC, for any reason, can no longer meet the due date" because a "failure to meet scheduled due dates is likely to have a significant competitive impact on new entrants' ability to compete."³⁹ Without adequate notice of jeopardy situations, CLECs will be unable to inform their customers of the inability to meet the due date before it occurs and to reschedule the time for service installation with a minimum of inconvenience to the customer.

26. Whether timely notice of jeopardy situations is being provided to CLECs is measured by the average jeopardy notice interval, which measures the average length of time remaining prior to the committed due date when notice of the jeopardy situation is given.⁴⁰ Similarly, in order to gauge whether BellSouth's commitments to CLECs are as reliable as its commitments to its own retail operations, comparative data must also be provided on the average jeopardy notice interval for BellSouth's own retail operations.

27. In addition to timely jeopardy notices, nondiscriminatory performance for CLECs requires that the percentage of CLEC orders jeopardized in the reporting period be no greater than the percentage of BellSouth's retail orders jeopardized in the same period. A

³⁹ *BellSouth South Carolina Order*, ¶ 130; *BellSouth Louisiana Order*, ¶ 39.

⁴⁰ *See Performance Measurements NPRM*, ¶ 62 (tentatively concluding that "incumbent LECs must measure the amount of time between the originally scheduled order completion date and time (as stated on the FOC) and the date and time a notice leaves the incumbent LEC's interface informing the [competing] carrier that the order is in jeopardy").

higher percentage jeopardy rate for CLECs would indicate that a discriminatory preference is being given by BellSouth to the completion of its own retail orders. For this reason, the Commission has tentatively concluded that incumbent LECs should also be required to monitor and report on the percentage of orders given jeopardy notices.⁴¹

28. Consistent with its prior refusal to provide these measures, BellSouth does not include any jeopardy measures in its list of performance measurements in its brief.⁴² On the other hand, in the materials submitted with Mr. Stacy's Performance Measurements Affidavit, BellSouth states for both of these measures that "BellSouth is currently in the process of developing this measurement and is committed to adding this measurement to the Service Quality Measurements later this year."⁴³ This again shows that BellSouth's second Louisiana application is premature.

29. Notwithstanding its statements that these measures are still under development, in its May 1998 report BellSouth includes some very limited data for these measures.⁴⁴ It is nowhere explained, however, how these data were collected, and some of the

⁴¹ See *Performance Measurements NPRM*, ¶ 63 (tentatively concluding that "incumbent LECs must measure the Percentage of Orders Given Jeopardy Notices").

⁴² See BellSouth Brief, p. 64.

⁴³ Stacy Performance Measurements Aff., Ex. WNS-2, pp. 1-2 & 7 note 1.

⁴⁴ See Stacy Performance Measurements Aff., Ex. WNS-3, Jeopardy Interval & Percent
(continued...)

reported results seem highly improbable. For example, BellSouth reports an average jeopardy interval for residence resale service in Louisiana of 2000.4 hours or 83.5 days.⁴⁵ The lack of explanation as to how these results were obtained is particularly troubling in light of BellSouth's statements to the Commission in Docket No. 98-56 that it issues jeopardy notices only "on an ad hoc basis . . . as individual circumstances warrant."⁴⁶

30. In his affidavit on performance measurements, Mr. Stacy also refuses to provide comparative data for BellSouth's performance in providing jeopardy notices for its own retail operations on the alleged ground that "no [BellSouth] analog exists" for either of these jeopardy measurements.⁴⁷ However, this claim is directly refuted by Mr. Stacy's own testimony in his OSS affidavit where he contends that CLECs "receive notification of service jeopardies in substantially the same time and manner as BellSouth."⁴⁸ As Mr. Stacy explains in his OSS affidavit, when a BellSouth order is in jeopardy, BellSouth's Service Order

⁴⁴ (...continued)
Jeopardy Report.

⁴⁵ *Id.*

⁴⁶ BellSouth Comments, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 (filed June 1, 1998), p. 12.

⁴⁷ Stacy Performance Measurements Aff., Ex. WNS-1, p. 14.

⁴⁸ Stacy OSS Aff., ¶ 150. *See also id.*, ¶ 149.

Communications System ("SOCS") generates a jeopardy notification back to the customer service agent in BellSouth's retail center.⁴⁹ This procedure is also confirmed in each of the three supporting affidavits submitted with Mr. Stacy's OSS affidavit.⁵⁰ The facts presented by BellSouth, therefore, make clear that jeopardy analogs exist. The reality is that BellSouth has simply refused to provide the appropriate comparative data regarding BellSouth's performance in providing jeopardies for itself,⁵¹ and without such comparative data, there can be no determination that parity of performance is being provided for CLECs.

C. Firm Order Confirmation Timeliness

31. Timely, nondiscriminatory notification of firm order confirmations ("FOCs") is "critical" to CLECs' ability to serve their customers.⁵² The FOC performs the vital functions of confirming the acceptance of the order and notifying the CLEC of the

⁴⁹ See Stacy OSS Aff., ¶ 149.

⁵⁰ See Stacy OSS Aff., Ex. WNS-42 (Yingling Aff.), ¶ 28 (if order is in jeopardy, "SOCS will send a copy of the order to the service center to advise of no facilities"); Ex. WNS-43 (Shivanandan Aff.), ¶ 21 ("If the status is changed prior to the due date, a notification will be sent to the specialist" who submitted the order); Ex. WNS-44 (Narducci Aff.), ¶ 11 (if order is in jeopardy, "a copy of the service order is sent to Customer Operations to advise of the [jeopardy] status").

⁵¹ As the Commission has already made clear, it is no defense for a BOC to avoid providing comparative performance data on the ground that it has not measured that particular aspect of its performance in the past. See *Ameritech Michigan Order*, ¶ 210

⁵² See, e.g., *BellSouth South Carolina Order*, ¶ 122; *BellSouth Louisiana Order*, ¶ 35

committed due date. Customers expect their carrier to be fully informed about the status of their orders and due dates. Unless they receive prompt notification of the confirmation of their orders, therefore, CLECs will be greatly disadvantaged in their ability to compete.

32. In its prior orders denying BellSouth's Section 271 applications for South Carolina and Louisiana, the Commission specifically found that BellSouth's failure to provide data comparing its performance in delivering firm order confirmations to CLECs with its delivery of equivalent notices to its own retail operations precluded any finding that parity was being provided to CLECs as required under the competitive checklist:

"[W]e conclude that, because BellSouth has not provided any data that compares its delivery of firm order confirmation notices to competing carriers to delivery of equivalent notices to its own retail operations for its own orders, BellSouth has failed to demonstrate that it is providing nondiscriminatory access and therefore we cannot conclude that it has met the competitive checklist."⁵³

⁵³ *BellSouth Louisiana Order*, ¶ 38. See also *id.*, ¶ 40 (requiring BellSouth to provide both FOC timeliness data and "the amount of time it takes to provide the equivalent information to its retail operations"); *BellSouth South Carolina Order*, ¶ 125 ("We conclude that, because BellSouth has failed to provide data comparing its delivery of FOC notices to competing carriers with how long it takes BellSouth's retail operations to receive the equivalent of a FOC notice for its own orders, BellSouth has not provided any evidence to demonstrate that it is providing nondiscriminatory access"), ¶ 126 ("for a BOC to demonstrate compliance with the nondiscriminatory standard of the Act, it must provide data for both its provision of FOC notices to competing carriers and the time it takes its retail operation to receive the equivalent of a FOC notice"); *Ameritech Michigan Order*, ¶ 187 ("We would expect Ameritech to submit such [comparative FOC] data in a future application in support of its claim that it is providing nondiscriminatory access to OSS functions"); *Texas PUC Order*, p. 11 ("Average Time to Return Firm Order Commitment' shall also include SWBT's own internal performance in order to compare it with its performance provided to CLEC").

Despite the Commission's clear directive to BellSouth in two prior orders that comparative performance data is required to determine whether firm order confirmations are being provided to CLECs on a nondiscriminatory basis, BellSouth has again failed to report any data on its delivery of the equivalent information to its own local retail operations -- data that is absolutely essential to any determination of parity. Instead, BellSouth simply asserts that "[BellSouth] retail report [is] not applicable" to its measure of FOC timeliness.⁵⁴

33. The Commission has already rejected BellSouth's claim that there is no retail analog for a FOC. Thus, the Commission has previously determined that "the BOC performs the functional equivalent of a 'FOC' for itself even if it does not do so in an identical manner."⁵⁵ Specifically, the Commission found that "the appropriate retail analog for a FOC would be the time that elapses between when [a BOC] order is placed into the legacy system and when the order is recognized as a valid order by the legacy systems."⁵⁶ The fact that BellSouth's systems may not send precisely the same "firm order confirmation notice" to

⁵⁴ Stacy Performance Measurements Aff., Ex. WNS-1, p. 6; Ex. WNS-3, Firm Order Confirmation Timeliness Report, note 3.

⁵⁵ *Ameritech Michigan Order*, ¶ 187 n.479.

⁵⁶ *Id.* See also *BellSouth South Carolina Order*, ¶ 122; *BellSouth Louisiana Order*, ¶ 36 n.128.

BellSouth's own retail sales representatives,⁵⁷ therefore, is irrelevant. As BellSouth's own submission makes clear, BellSouth's ordering systems perform the same function by denying the agent's attempts to release an order from RNS, DOE or SONGS until the order is accepted as a valid order by BellSouth's ordering systems.⁵⁸ Indeed, BellSouth's own Service Quality Measurements document lists "Interval for FOC" among the data relating to BellSouth's performance for its own retail operations that it proposes to gather and retain.⁵⁹ In the face of this evidence and the Commission's prior determinations that such comparative data is required, there is no excuse for BellSouth's failure to provide comparative data for its delivery of FOC-equivalent notices to its own retail operations, and BellSouth's failure to provide that information constitutes a failure of proof under the competitive checklist.

D. Timeliness Of Order Rejections

34. BellSouth's performance measurements are also deficient because BellSouth has failed to provide comparative data for its performance in providing notice of

⁵⁷ See Stacy OSS Aff., ¶ 129.

⁵⁸ See, e.g., Stacy OSS Aff., Ex. WNS-43 (Shivanandan Aff.), ¶ 18 ("If an error is found by the up-front editing in SONGS or DOE, an error message is displayed on-line to the specialist [BellSouth sales agent]. The specialist must correct the error before the order can be processed and sent to SOCS").

⁵⁹ See Stacy Performance Measurements Aff., Ex. WNS-1, p. 7.

errors for its own retail operations for rejected orders.⁶⁰ This omission is also fatal to its application, for as the Commission has specifically found in two prior orders, without this comparative data no determination can be made that BellSouth is providing such error notification in a nondiscriminatory manner:

"Because BellSouth has not provided the Commission with information on how long it takes its own representatives to receive notices of errors, we cannot determine whether BellSouth is providing order rejection notices to competing carriers at parity to that which it provides to itself."⁶¹

Likewise in this case, without data on BellSouth's performance in providing error notification to its own retail representatives, it cannot be determined whether BellSouth is providing parity of performance for CLECs.

35. BellSouth's claim that comparative data for its retail business is "not applicable" because "BellSouth representatives do not receive an equivalent form of

⁶⁰ See Stacy Performance Measurements Aff., Ex. WNS-1, p. 5 (asserting "BST retail report not applicable" to measurement of average order rejection interval); Ex. WNS-3, Reject Distribution Interval & Average Interval Report, note 2.

⁶¹ *BellSouth Louisiana Order*, ¶ 33. See also *id.*, ¶ 40 (requiring BellSouth to provide both data on the timeliness of its delivery of order rejections to CLECs and comparative data on "the amount of time it takes to provide the equivalent information to its retail operations"); *BellSouth South Carolina Order*, ¶ 118 ("We expect, BellSouth, . . . to submit appropriate comparative data on the timeliness of order rejection notices to support any future claims that it is providing nondiscriminatory access to OSS functions" for CLECs).

notification of errors" is plainly incorrect.⁶² BellSouth's systems do not permit its retail sales representatives to release an order to SOCS from RNS, DOE or SONGS until its systems have determined that the order is in compliance with various requirements or "error edit routines."⁶³ Additional error edits are performed in SOCS by BellSouth's Service Order Edit Routine ("SOER"). In either event, if an error is detected, BellSouth's systems "will not process [the order] to downstream systems," but instead return the order to the originating BellSouth sales agent for correction.⁶⁴ The fact that BellSouth's agents do not receive precisely the same "form of notification of errors"⁶⁵ is irrelevant. It is the substance, not the form, that matters. The question is whether BellSouth provides CLECs with the same level of support that it provides to its own retail operations for the purpose of correcting errors, and that question can only be resolved by comparing BellSouth's performance for CLECs with its performance of

⁶² Stacy OSS Aff., ¶ 128. In fact, despite BellSouth's contention that such comparative data is not applicable, BellSouth's Service Quality Measurements document lists "Reject Interval" among the data relating to BellSouth's performance for itself that it will gather and retain. See Stacy Performance Measurements Aff., Ex. WNS-1, p. 7.

⁶³ Stacy OSS Aff., Ex. WNS-43 (Shivanandan Aff.), ¶ 18.

⁶⁴ *Id.*. See also *id.*, ¶ 22 ("When an error notice is generated, it is corrected by the [sales agent] that originated the service order"); Stacy OSS Aff., Ex. WNS-44 (Narducci Aff.), ¶ 9 ("Errors on the service order are identified and transmitted via SOCS back to the originating [customer service agent] and associated service center for resolution").

⁶⁵ Stacy OSS Aff., ¶ 128 (emphasis added).